

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO

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CLERK'S OFFICE
U.S. DISTRICT COURT
SAN JUAN, P.R.

UNITED STATES OF AMERICA,

Plaintiff

v.

JOSÉ FIGUEROA-CARTAGENA,

Defendant

SEALED

CRIMINAL 07-0173 (GAG)

MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION
RE: RULE 11 PROCEEDINGS (PLEA OF GUILTY) AND WAIVER
OF INDICTMENT AND AGREEMENT TO PROCEED BY INFORMATION

I. Personal Background

An information was filed in open court on April 19, 2007. Defendant agrees to plead guilty to count one of the information. Count one charges defendant that on or about July 15, 2006, the defendant, knowing that an offense against the United States had been committed, namely the taking of a motor vehicle, which had been shipped and transported in interstate commerce, from the person and presence of another by force, violence and intimidation, with the intent to cause death or serious bodily injury, as prohibited by 18 U.S.C. § 2119, did assist Neliza Figueroa Cartagena, Félix Gabriel Castro Davis aka "Gaby," and Félix Alberto Castro Davis aka "Bertito," in order to hinder or prevent their apprehension, trial or punishment. All in violation of 18 U.S.C. § 3.

II. Consent to Proceed Before a Magistrate Judge

On April 19, 2007, while assisted by Carlos Vázquez, Assistant Federal Public Defender, the defendant, by consent, appeared before me in order to waive his right to prosecution by indictment and to plead guilty to a one count information. The defendant agreed to proceed by way of information and waived his right to be charged

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with an indictment. The defendant informed that he understood the charges which he faced and was informed of his constitutional right to be charged in an indictment, a right which he could waive if he consents to being charged by information of the United States Attorney. He noted that he had discussed this with his attorney and acknowledged that no threats or promises had been made to him to waive indictment and proceed by way of information. In open court the defendant was questioned as to the purpose of the hearing being held. The defendant responded that the purpose of the hearing was to accept responsibility or plead guilty. The defendant was advised of his right to have all proceedings, including the change of plea hearing, before a United States district judge. He was given notice of: (a) the nature and purpose of the hearing; (b) the fact that all inquiries were to be conducted under oath and that it was expected that his answers would be truthful; and (c) his right to have the change of plea proceedings presided over by a district judge instead of a magistrate judge. The defendant was also explained the differences between the appointment and functions of the two. The defendant consented to proceed before this magistrate judge.

III. Proceedings Under Rule 11, Federal Rules of Criminal Procedure

A. Compliance With Requirements Rule 11(c)(1)

Rule 11 of the Federal Rules of Criminal Procedure governs the acceptance of guilty pleas to federal criminal violations. Pursuant to Rule 11, in order for a plea of guilty to constitute a valid waiver of the defendant's right to trial, guilty pleas must be knowing and voluntary: "Rule 11 was intended to ensure that a defendant who pleads guilty does so with an 'understanding of the nature of the charge and consequences of his plea.'" United States v. Cotal-Crespo, 47 F.3d 1, 4 (1st Cir. 1995) (quoting McCarthy v. United States, 394 U.S. 459, 467 (1969)). [There are three core concerns in these proceedings]: 1) absence of coercion; 2) understanding of the charges; and 3) knowledge of the consequences of the guilty plea. United States v. Cotal-

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3 Crespo, 47 F.3d at 4 (citing United States v. Allard, 926
4 F.2d 1237, 1244-45 (1st Cir. 1991)).

5 United States v. Hernández-Wilson, 186 F.3d 1, 5 (1st Cir. 1999).

6 In response to further questioning, defendant noted that he understood that
7 if convicted in count one of the information, he was exposed to a term of
8 imprisonment which may not be more than seven and a half years, a fine not to
9 exceed \$125,000, and a term of supervised release of not more than three years.

10 Prior to or at the time of sentencing, the defendant will pay a special
11 assessment of \$100, per count, to be deposited in the Crime Victim Fund, as required
12 by 18 U.S.C. § 3013(a).

13 The court may order the defendant to pay a fine or restitution which defendant
14 agrees to pay. As part of this plea and cooperation agreement, and should the court
15 impose restitution upon the defendant, the defendant agrees to produce complete
16 information regarding all restitution victims and defendant agrees to execute a
17 financial statement to the United States.

18 Defendant was explained what the supervised release term means. He was
19 advised that in passing sentence the court had to consider the criteria fixed by the
20 sentencing guidelines; the factors to be considered under such guidelines; the fact
21 that the court could abide by the recommended sentencing range or depart from that
22 range, and that, in doing so, the court could and would consider all relevant facts.
23 It was emphasized that cooperation with the United States Probation Officer would
24 assist the court in reaching a fair sentence. The defendant understands and
25 acknowledges that parole has been abolished.

26 Emphasis was made on the fact that at this stage, no prediction or promises
27 as to the sentence to be imposed could be made by anyone. Defendant responded to
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3 questions in that no promises, threats, force or predictions as to what sentence will
4 be imposed have been made to him.

5 B. Admonishment of Constitutional Rights

6 To assure defendant's understanding and awareness of his rights, defendant
7 was advised of his right:

8 1. To remain silent at trial and be presumed innocent, since it is the
9 government who has the burden of proving his guilt beyond a reasonable doubt.

10 2. To testify or not to testify at trial, and that no comment could be made by
11 the prosecution in relation to his decision not to testify.

12 3. To a trial before a district judge and a jury, at which he would be entitled
13 to see and cross examine the government witnesses, present evidence on his behalf,
14 and challenge the government's evidence.

15 4. To have a verdict rendered by a jury which would have to be convinced of
16 defendant's guilt beyond a reasonable doubt by means of competent evidence.

17 5. To use the subpoena power of the court to compel the attendance of
18 witnesses.

19 Upon listening to the defendant's responses to questioning, observing his
20 demeanor and his speaking with his attorney, it is determined that defendant knows
21 his constitutional rights.

22 C. Consequences of Pleading Guilty

23 Upon advising defendant of his constitutional rights, he was further advised
24 of the consequences of pleading guilty. Specifically, defendant was advised that by
25 pleading guilty and upon having his guilty plea accepted by the court, he will be
26 giving up the above rights and would be convicted solely on his statement that he is
27 guilty.
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3 Furthermore, defendant was admonished of the fact that by pleading guilty he
4 would not be allowed later on to withdraw his plea because he eventually might
5 disagree with the sentence imposed, and that if under any kind of supervision
6 (probation or supervised release) that privilege could be revoked and he could be
7 required to serve an additional term of imprisonment.

8 D. Plea Agreement

9 The parties have entered into a written plea and cooperation agreement that,
10 upon being signed by the government, defense attorney and defendant, was filed and
11 made part of the record. Defendant was clearly warned and recognized having
12 understood that:

13 1. The plea agreement is not binding upon the sentencing court.

14 2. The plea agreement is an "agreement" between the defendant, defense
15 attorney and the attorney for the government which is presented as a
16 recommendation to the court in regards to the applicable sentencing adjustments and
17 guidelines.

18 3. The agreement provides a sentencing recommendation and/or anticipated
19 sentencing guideline computation, that can be either accepted or rejected by the
20 sentencing court.

21 4. In spite of the plea agreement and any sentencing recommendation
22 contained therein, the sentencing court retains full discretion to reject such plea
23 agreement and impose any sentence up to the possible maximum penalty prescribed
24 by statute.

25 The defendant is fully aware that this is a Package Plea and Cooperation
26 Agreement, that is, a plea agreement conditioned upon the guilty plea and
27 cooperation of defendant. In light of the nature of this package plea and cooperation
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3 agreement, the defendant certifies that defendant is not entering into a guilty plea
4 because of threats or pressures from any codefendant to accept such plea offer.

5 Defendant acknowledged having understood this explanation.

6 E. Government's Evidence (Basis in Fact)

7 The government presented a proffer of its evidence with which the defendant
8 concurred. The government's proffer complied with and tracked in part the statutory
9 language of the information.

10 Accordingly, it is determined that there is a basis in fact and evidence to
11 establish all elements of the offenses charged.

12 F. Voluntariness

13 The defendant accepted that no leniency had been promised, no threats had
14 been made to induce him to plead guilty and that he did not feel pressured to plead
15 guilty. He listened attentively as the prosecutor outlined the facts which it would
16 prove if the case had proceeded to trial.

17 IV. Conclusion

18 The defendant, by consent, has appeared before me pursuant to Rule 11,
19 Federal Rules of Criminal Procedure, and has entered a plea of guilty as to count one
20 of the information.

21 After cautioning and examining the defendant under oath and in open court,
22 concerning each of the subject matters mentioned in Rule 11, as described in the
23 preceding sections, I find that the defendant José Figueroa-Cartagena is competent
24 to enter this guilty plea, is aware of the nature of the offenses charged and the
25 maximum statutory penalties that the same carries, understands that the charges are
26 supported by the government's evidence, has admitted to every element of the offense
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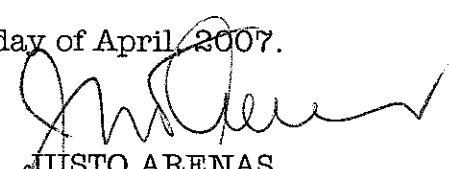
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3 charged, and has done so in an intelligent and voluntary manner with full knowledge
4 of the consequences of his guilty plea.

5 Therefore, I recommend that the court accept the guilty plea of José Figueroa-
6 Cartagena and that the defendant be adjudged guilty as to count one of the
7 information.

8 This report and recommendation is filed pursuant to 28 U.S.C. § 636(b)(1)(B)
9 and Rule 72(d) of the Local Rules of Court. Any objections to the same must be
10 specific and must be filed with the Clerk of Court within five (5) days of its receipt.
11 Rule 510.1, Local Rules of Court; Fed. R. Civ. P. 72(b). Failure to timely file specific
12 objections to the report and recommendation is a waiver of the right to review by the
13 district court. United States v. Valencia-Copete, 792 F.2d 4 (1st Cir. 1986).

14 At San Juan, Puerto Rico, this 30th day of April, 2007.

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17 JUSTO ARENAS
18 Chief United States Magistrate Judge
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